

))

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8483 of 1997

with

CIVIL APPLICATION No. 11397 of 1997

with

SPECIAL CIVIL APPLICATION No. 8738 of 1997

For Approval and Signature:

Hon'ble THE CHIEF JUSTICE MR. K.SREEDHARAN

and

MR.JUSTICE A.R.DAVE

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
1 & 2 YES : 2 to 5 NO

-----  
PATEL MANGUBHAI SHANKERBHAI

Versus

DIRECTOR AGRICULTURAL MARKETING AND RURAL FINANCE  
-----

Appearance:

1. Special Civil Application No. 8483 & 8738 of 1997  
MR SK JHAVERI for Petitioners  
NOTICE SERVED BY DS for Respondent No. 1, 4  
MS AMEE YAGNIK AGP for Respondent No. 2
  2. Civil Application No. 11397 of 1997  
MR BS PATEL for Petitioners  
MR KS JHAVERI for Respondent No. 1
- 

CORAM : THE CHIEF JUSTICE MR. K.SREEDHARAN and

Date of decision: 24/04/98

C.A.V JUDGEMENT (Per : Sreedharan, CJ.)

These two Special Civil Applications relate to Patan Agricultural Produce Market Committee, so we consider advantageous to dispose of by a common judgment.

2. Special Civil Application No. 8483 of 1997 is at the instance of three members of Patan Agricultural Produce Market Committee questioning the action of the Authorized officer in finalizing the final voters' list for the election to the Committee which was scheduled to be held on 18.1.1998. Prayer in the petition is made for the issuance of a writ of prohibition restraining Authorized Officer from making any amendment in the Preliminary Voters' List in any manner contrary to the provisions of Rule 8 (1a) of the Rules, framed under the Agricultural Produce Market Committees Act, 1963.

3. When Special Civil Application No. 8483 of 1997 came up for admission, learned Single Judge, while issuing notice directed the third respondent not to delete the names of Voters whose names are appearing in the Preliminary List till further orders. When it came up before the learned Single Judge on 4.12.1997, it was submitted before the learned Judge that election to the Market Committee has been cancelled and so the learned Judge vacated the interim order. Learned Judge further observed that respondent No. 3 also stands deleted as the Authorized Officer from the array of parties in view of the cancellation of election but he should continue only for the purpose of giving him opportunity to justify his interpretation of Rule 8 which is subject matter of the petition. Therefore it follows that no final voters' list was prepared by the Authorized Officer for the election to the Market Committee.

4. Special Civil Application No. 8738 of 1997 is filed at the instance of three petitioners. They are Patan Agricultural Produce Market Committee, represented by its Chairman and two members of the Committee. The term of the office of the existing Market Committee was to expire on 18th January, 1998. The process of elections were initiated for constituting a new Committee. When that was in progress, and Voters' list was about to be finalized, Government issued an Order dated 27.11.1998 stopping the election on the ground of reconstitution of Talukas. Pursuant to that order of the

Government, Director, Agricultural Produce Marketing & Rural Finance, Gujarat State issued Order dated 2.12.1997 stopping further proceedings for election till the end of 1998. That order is under challenge in this Special Civil Application. Main prayer in this petition is for quashing the order dated 2.12.1997, and to direct respondents from taking any action pursuant to the order of the Government dated 27.11.1997, interfering with the election to Patan Agricultural Produce Market Committee.

5. When these petitions came up for final hearing, learned Addl. Advocate General submitted before Court that Government are withdrawing the Order dated 27.11.1997 and the consequential order passed by the Director on 2.12.1997. According to the learned Addl. Advocate General, election to Patan Agricultural Produce Market Committee will be conducted in accordance with law, as expeditiously as possible. It is also stated by learned Addl. Advocate General that the election process will be continued from the stage at which it was stopped. These statements made by learned Addl. Advocate General are recorded and are made order of this Court.

6. Learned counsel representing the petitioners in Special Civil Application No. 8738 of 1997 than submitted that for no fault of the Committee, the election was postponed on the ground that Talukas have been reconstituted. Since the postponement of the election was for no justifiable reason, members of the previous Committee should be allowed to continue. In support of this argument, he placed reliance on a decision of this Court in A.A Kureshi v. State, 1992 (1) GLR p-503. The said decision according to us is not one supporting the petitioners' claim. In the reported case, election to the Corporation was not held on the ground that the figures of the new Census were not available. While postponing the election on that basis, the term of office of the elected members of the Corporation was not extended. This step was taken by the Government in the case of Corporations alone, while in the case of other local bodies, the terms of elected members were extended. Taking into consideration this differential treatment, Bench took a view that Government acted arbitrarily in not extending the period of the elected members of the Corporation. That decision on facts cannot have any help to the petitioners in this case.

7. In the case of Patan Agricultural Produce Market Committee, the term of elected members expired in or around February 1998. They are continuing in office by virtue of the interim order passed by this Court in

Special Civil Application No. 8161 of 1997. That Special Civil Application is filed by Patan Agricultural Produce Market Committee, represented by its Chairman, challenging order dated 3.11.1997, passed by the Government superseding the Committee under Section 46 (2) (ii) of the Act. A Market Committee who has been so found liable to be superseded by the Government cannot be permitted to continue in office beyond the full term for which they were elected by this Court in exercise of powers under Article 226 of the Constitution.

8. In view of what has been stated above, we direct the Government to exercise its powers under Section 11 of the Gujarat Agricultural Produce Markets Act, 1963 for the administration of the affairs of Market Committee and to hold the elections to the Committee in accordance with law, as expeditiously as possible.

9. Special Civil Applications stand disposed of in the above terms. We make no order as to costs.

(K. Sreedharan, CJ.)

(A.R Dave, J.)

Prakash\*